ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 259–0425; FRL–7598–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified, Ventura County, Santa Barbara County, and Monterey Bay Unified Air Pollution Control Districts and Yolo Solano, Bay Area, and Mojave Desert Air Quality Management Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified (SJVUAPCD), Ventura County (VCAPCD), Santa Barbara County (SBCAPCD), and Monterey Bay Unified (MBUAPCD) Air Pollution Control Districts and to the Yolo Solano (YSAQMD), Bay Area (BAAQMD), and Mojave Desert (MDAQMD) Air Quality Management Districts' portions of the California State Implementation Plan (SIP). These actions were proposed in the **Federal Register** on September 20, 2002 and August 8, 2003 and concern volatile organic compound (VOC) emissions from architectural coatings. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources.

EFFECTIVE DATE: This rule is effective on February 2, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Yolo Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392.

Copies of these rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same versions of these rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On September 20, 2002 (67 FR 59229) and August 8, 2003 (68 FR 47279), EPA proposed limited approvals and limited disapprovals of the following rules that were submitted for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4601	Architectural Coatings	10/31/01	03/15/02
VCAPCD	74.2	Architectural Coatings	11/13/01	03/15/02
SBCAPCD	323	Architectural Coatings	11/15/01	03/15/02
MBUAPCD	426	Architectural Coatings	04/17/02	06/18/02
YSAQMD	2.14	Architectural Coatings	11/14/01	01/22/02
BAAQMD	8–3	Architectural Coatings	11/21/01	06/18/02
MDAQMD	1113	Architectural Coatings	02/24/03	04/01/03

We proposed limited approvals because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed limited disapprovals because some rule provisions conflict with section 110 and part D of the Act. These rules were all based on the same model—the California Air Resources Board's (CARB) Suggested Control Measure for Architectural Coatings (SCM)—and as a result, they contain many of the same rule deficiencies. These deficiencies relate to the averaging provisions incorporated into the rules. The deficient provisions common to all seven rules listed in Table 1 include the following:

1. High-VOC coatings sold under the general sell-through provision cannot necessarily be distinguished from coatings sold under an averaging program based on the information explicitly required to be maintained under the rules. This compromises the enforceability of the rules as manufacturers may claim that emissions from coatings sold under the sell-through provision should be excluded from averaged emissions.

2. The requirement that manufacturers describe the records being used to calculate coating sales under averaging programs is not sufficiently specific and represents executive officer discretion.

3. The rules' language regarding how violations of the averaging compliance option shall be determined is ambiguous.

4. The rules grant the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations, raising jurisdictional issues and creating enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

5. The rules allow manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be

implemented by CARB and conducted on a statewide basis.

Deficiency #5 was identified in our 2003 proposal (68 FR 47279) but not specifically noted in our 2002 proposal (67 FR 59229). This deficiency, however, was described in each of the Technical Support Documents (TSDs) for the three rules that were the subject of our 2002 proposal (67 FR 59229) and was a basis for our limited disapproval of each of the first three rules listed in Table 1. Because the language contained in all seven of these rules is similar and they are all components of a larger statewide program, we are now clarifying that this last deficiency is a basis for our limited disapproval of all seven rules listed in Table 1. Our proposed actions contain more information on the basis for this rulemaking and on our evaluation of the submittals.

The deficiencies identified in our 2002 proposal (67 FR 59229) of the first three rules listed in Table 1 also differed slightly from the deficiencies identified in our 2003 proposal (68 FR 47279) for the last four rules listed in Table 1. Other deficient provisions identified in our 2002 proposal (67 FR 59229) but not in our 2003 proposal (68 FR 47279) included the following:

1. The rules allow the VOC content displayed on a coating to be calculated using product formulation data but lack a clear and enforceable definition for the term formulation data.

2. The rules contain typographical errors that make the rules confusing to regulated sources and less enforceable.

Based on information received during and after the comment period of our 2002 proposal, we no longer consider these to be deficiencies in these rules. See Comments and Responses #2 and #8.

II. Public Comments and EPA Responses

EPA's proposed actions provided 30-day public comment periods. During the comment period for the 2002 proposal (67 FR 59229), we received comments from the following parties.

1. Howard Berman, Environmental Mediation, Inc. (EM) representing Dunn-Edwards (DE), a California based manufacturer and retailer of coatings; letter dated October 17, 2002.

2. Madelyn K. Harding, Sherwin Williams (SW), a worldwide manufacturer of coatings; letter dated October 17, 2002.

3. Mike Villegas, VCAPCD; letter dated October 17, 2002.

4. Scott Nester, SJVUAPCD; letter dated October 17, 2002.

5. Ellen Garvey, Bay Area Air Quality Management District (BAAQMD); letter dated October 18, 2002.

6. Michael P. Kenny, CARB; letter dated October 21, 2002.

We did not receive any comments during the comment period for the 2003 proposal (68 FR 47279) although we made clear that comments submitted on our 2002 proposal would be considered to apply to our 2003 proposal where appropriate. The comments and our responses are summarized below.

Comment #1: EM comments that their client, DE, disagrees, as does CARB, with our conclusion that these rules are subject to EPA's Economic Incentive Program Guidance (EIP Guidance). DE and CARB filed extensive comments as to why these rules do not fall within the scope of the EIP Guidance. CARB comments further that the EIP Guidance is a non-binding guidance document.

Response #1: An EIP is any program which may include State established measures directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals (EIP Guidance, page 158). These rules (1) regulate architectural coatings, an area source, (2) were submitted to EPA in order to meet the National Ambient Air Quality Standards (NAAQS), and (3) allow manufacturers to reduce emissions from their products to comply with the requirements of the rules in a more flexible and lower-cost manner. Furthermore, these rules fall under the category of emission averaging EIPs because they enable a source, in this case a particular coating, emitting above its allowable emission rate limit to comply with that rate limit by averaging its emissions with a second source, a different coating, emitting below that second source's regulatory rate limit (EIP Guidance, page 91). Clearly, these rules meet the definition of an EIP and it is, therefore, appropriate to apply the EIP Guidance. Any comments submitted by DE and CARB on the EIP Guidance were considered by us before finalization of the guidance and do not need to be reconsidered in the current context. The EIP Guidance is EPA's most recent guidance for economic incentive programs. It is being used to help ensure consistent interpretation of the CAA where its application to detailed EIP requirements is unclear.

Comment #2: EM and BAAQMD state that formulation data is a reliable means for calculating a product's VOC content because manufacturers know how their products are formulated and that everyone understands what is required to calculate VOC content. SW and CARB state that defining the term formulation data is unnecessary because the EPA's National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR part 59 subpart D, the National Rule) also allows formulation data to be used without including a separate definition for the term. SW adds and VCAPCD, SJVUAPCD, BAAQMD and CARB also comment that the VOC content is ultimately determined by testing with Method 24 of appendix A of 40 CFR part 60. If EPA requires a definition of formulation data, DE would want EPA to state that formulation data is preferred over Method 24 because of the inherent unreliability and wide margin of error associated with Method 24.

Response #2: While manufacturers may know exactly what goes into their products, they often report paint formulation data by indicating a range for each component within a product. These ranges may often be quite wide, making the particular VOC content of a product difficult to determine. The National Rule does not, in fact, have a separate definition for formulation data. As with all analytical methods, there is some uncertainty associated with Method 24; however, it is a reliable method that has gone through extensive quality assurance and round robin testing to ensure that it is replicable and reliable for determining VOC content. Because the National Rule and these rules ultimately rely on Method 24 to validate the VOC content of coatings for compliance purposes, we concur that a separate definition for the term formulation data is not necessary. As a result, we are not finalizing our concern regarding formulation data as a deficiency. We encourage DE to submit an alternative test method to EPA for consideration if they deem another method to be more reliable than Method 24.

Comment #3: EM, SW, VCAPCD, BAAQMD and CARB comment that the sell through of averaged coatings is not problematic. SJVUAPCD, BAAQMD and CARB state that labeling on coatings indicating the date of manufacture and the coating's participation in an averaging program is sufficient to determine compliance. SW and CARB state that averaging plans calculate emissions based on shipments into the state and that all emissions are counted at the start of an averaging program even though the coating may not yet have been sold. EM claims that the standard sell through provision of all coatings is more problematic.

Response #3: EPA is primarily concerned with the sell through of averaged coatings because it may make certain compliance determinations difficult or impossible. In order to determine compliance for an averaged coating, an inspector would have to be able to associate the emissions from that particular can of coating with a particular compliance year. While a can of coating may have been manufactured within a certain compliance period, a manufacturer may not necessarily include it among the averaged emissions for that year. It is therefore important that each can of coating in an averaging plan be specifically attributable to a particular compliance year. The date code and other labeling on a coating does not provide this information. EPA notes, contrary to SW and CARB's claims, that several of these rules were not written such that the volume of coating used as the basis for emissions calculations is, in fact, the volume of coating sold [see sections A1 of the CARB's Suggested Control Measure (SCM) and all rules, section A.3.3 of SCM, section 8.4.3 of SJVUAPCD Rule 4601, section AA.3.6 of VCAPCD Rule 74.2, section A.3.3 of SBCAPCD Rule 323, and section A.3.3 of MBUAPCD Rule 426]. If at the end of a compliance period, a manufacturer finds that they have exceeded the allowable emissions, they may argue that some emissions from a coating that did not sell in the current compliance year should be advanced into the next compliance year because of sell through. Alternatively, if a manufacturer determined that more high-VOC products were sold than projected in their averaging plan, they could argue that they were sold under the sell-through provision.

Comment #4: EM comments that the jurisdictional issue created by CARB approving, disapproving, renewing, modifying or terminating averaging programs could be seen as an extension of their advisory role to local air pollution control districts. VCAPCD, BAAQMD, and CARB comment that CARB is merely providing administrative functions. CARB notes that they are assuming some administrative functions at the request of the California Air Pollution Control Officers Association (CAPCOA). SJVUAPCD and CARB state CARB's involvement simplifies the implementation of averaging programs and that CARB's purely administrative role is clarified in a draft Memorandum of Understanding (MOU) between the districts and CARB. SJVUAPCD, BAAQMD, and CARB also note that the districts retain ultimate enforcement authority.

Response #4: As currently written, these rules give CARB many decision making powers that have not been delegated to it. A draft MOU clarifying the responsibilities of the districts and CARB is unenforceable. If districts and CARB do not fulfill an enumerated responsibility described in the MOU, no agency, including EPA could take action to require the districts or CARB to perform that duty. Furthermore, while districts and CAPCOA may wish and agree to release these powers to the CARB, we have received no legal assurances that the CARB may assume these powers without an act of the State Legislature. EPA's recommendation to the districts to resolve this deficiency was to scale CARB's involvement to a more advisory role by structuring the program so that CARB would be responsible for making recommendations which each district would then formally adopt or reject. In this way, the districts, not CARB, maintain their authority as the decision making and regulatory body. Alternatively, we would consider a certification by the State Attorney General that CARB has these authorities. Furthermore, the district's ability to enforce an averaging program could be hampered if it was not the entity that originally approved the program.

Comment #5: EM believes that the problem of not specifying exactly what records are being used to calculate emissions is resolved if manufacturers commit before implementing their averaging programs to use only one form of distribution as the basis for calculating emissions under an averaging program.

Response #5: According to various provisions of these rules, averaging is a provision that operates on a statewide basis by a statewide agency, CARB. It is therefore most consistent to require that emissions calculations also rely on statewide data. Allowing manufacturers to choose to use either district-specific or statewide data gives them the ability to manipulate emissions calculations by choosing the data type that shows fewer emissions. We note, additionally, that the existing rules do not require manufacturers to select one form of distribution as the basis for calculating emissions.

Comment #6: EM, VCAPCD, SJVUAPCD, BAAQMD, and CARB comment that under an averaging program, an exceedance occurs when the entire program shows on the whole that the actual emissions exceed the allowable emissions. The excess emissions cannot be attributable to any one product in the program.

Response #6: It is precisely because excess emissions cannot be attributed to any one product that it must be assumed that all products under an averaging program that were sold with a VOC content greater than the effective VOC limit contributed to the exceedance. For example, if an averaging program balances the emissions from three coatings that exceed the limits of the rule against the emissions of two super-compliant coatings, then all three non-compliant coatings were partially responsible for the exceedance and a violation for each of these coatings should be assessed for each day of the compliance period.

Comment #7: SW comments that EPA's proposed language for clarifying how violations of averaging provisions are determined would result in penalties that are too large and not in balance with the damage done to the environment. CARB comments that the magnitude of potential penalties under the current rule language is a sufficient disincentive for willful violations. BAAQMD states that any difficulties with enforcement and assessment of penalties can be corrected during the following compliance period.

Response #7: EPA's proposed language would clarify that violations could be assessed for any coating that was sold above the limits of the rule. The benefits of allowing manufacturers to continue to sell coatings that do not meet the limits of the rule under an averaging program must be balanced by significant deterrents against non-compliance. These rules currently limit the violations that can be assessed to only one per day. By clarifying the language in the rule, agencies may assess larger penalties, however, they are also in no way precluded from using their enforcement discretion to weigh the significance of the overall environmental damage to assess a penalty that is appropriate based on the overall circumstances of the violation.

Comment #8: VCAPCD, SJVUAPCD, BAAQMD and CARB comment that the typographical errors in the rules should not be considered a deficiency, but a rule improvement issue, since the correct language can be determined.

Response #8: We concur that the correct language can ultimately be surmised despite the typographical errors. As a result, we are not finalizing this issue as a deficiency.

Comment #9: VCAPCD, BAAQMD, and CARB comment that all deficiencies associated with averaging become moot after 2005 when the averaging provisions of these rules sunset. CARB

asserts that there are ultimately no SIP implications from these temporary programs.

Response #9: EPA is required to ensure that SIP regulations fully comply with enforceability and other requirements of CAA section 110 and part D. Because of the near-term sunset date of the averaging provisions, however, we concur that it will not be necessary to impose sanctions because the deficient rule provisions will vacate before the sanction clocks would expire. For further discussion see our 2003 proposal (68 FR 47279).

Comment #10: VCAPCD and CARB state that EPA should not examine the averaging programs based on the possibility that the averaging programs would be extended and notes that an extension of the averaging programs would require a revision to the rules through action by their respective Boards.

Response #10: The evaluation of these rules was not based on the possibility of the extension of the averaging provisions. All evaluation of these rules was based on the programs as they exist under current rule language. EPA noted in our TSDs for these rules one additional recommendation to evaluate these programs after three years if the averaging programs were to be extended beyond 2005. We clearly stated that this was a recommendation to improve the rule and that it was not an issue affecting our current action.

Comment #11: In response to Deficiency #5, VCAPCD and CARB comment that district-specific data is equally enforceable as statewide data. CARB believes that district-specific data should be allowed so that smaller regional manufacturers may utilize the averaging provisions of these rules.

Response #11: Submitting statewide data does not prevent smaller regional manufacturers from averaging their coatings. If these manufacturers do not have sales in particular areas of the state then the sales in those areas would be assumed to be zero and statewide data could be generated. In part, we are concerned that the existing language would allow manufacturers to game the system and moderate overall emission calculations by using district-specific or statewide data, depending on whichever produced more favorable results. Also see Response #5.

Comment #12: VCAPCD and CARB comment that the language that describes which records may be used to calculate emissions is sufficient for determining compliance when coupled with the Statewide Averaging Guidance Document and active cooperation with individual manufacturers. BAAQMD states that this language is meant to recognize the unique nature of a specific manufacturers' program and does not constitute executive officer discretion because the stringency of the rule cannot be affected by an administrative decision. SJVUAPCD comments that many rule provisions allow inspectors to verify the accuracy of records for determining compliance. CARB notes that a definition for enforceable sales record proposed by EPA is essentially what is being followed when approving acceptable records and cites this as an example of where EPA should have raised this concern earlier during the development of South Coast Air Quality Management Districts' (SCAQMD) Rule 1113.

Response #12: These rules do not specify what records may be submitted as an enforceable record. Any record, including those that may be unverifiable, may be submitted to substantiate emission calculations and it is the purview of the Executive Officer to approve any of these records as acceptable. This unlimited executive officer discretion is unenforceable. There is currently no provision under these rules to verify the accuracy of a particular record before an averaging program is approved. While the Statewide Averaging Guidance Document may further delineate and limit the records that may be submitted, the Statewide Averaging Guidance Document is not an enforceable element of the SIP and could not be relied upon for enforcement purposes. EPA raised this concern regarding enforceable records to SCAQMD during the development of Rule 1113 in a May 13, 1999 letter and notes that this provision was not proposed as an amendment to Rule 1113 until the March 31, 1999 Working Group meeting. This same concern was raised to the CARB in a June 21, 2000 letter after it proposed a similar provision in a draft of the SCM emailed on June 14, 2000 for consideration. Although not relevant to this rulemaking, our review of these provisions as they were developed was timely and responsive.

Comment #13: SJVUAPCD, BAAQMD, and CARB comment that the emissions reductions associated with these rules are valuable. CARB comments that these rules are significantly more stringent that the National Rule. SJVUAPCD asserts that approval of these rules would encourage other districts to adopt similar rules which could achieve up to 10 tons of emission reductions per day across California. CARB claims that EPA's proposed limited disapproval of these rules is discouraging districts from submitting their architectural coating rules as SIP revisions. BAAQMD indicates that the development of the SCM and these rules were the result of over two years of work and that the difficulties historically encountered in adopting architectural coatings rules should be balanced against the marginal benefits of EPA's suggested rule changes.

Response #13: EPA does not dispute that these rules reduce VOC emissions by putting more restrictive VOC content limits into effect for architectural coatings and we recognize the significant efforts of the CARB and districts to develop the SCM and these rules modeled on it. At the same time, EPA's role is to ensure that all rules approved into the SIP meet the statutory requirements of the CAA. Because these programs provide the regulated industry considerable compliance flexibility, this must be balanced by enforcement certainty and adequate penalties for non-compliance. It is not EPA's intention to discourage the submittal of similar rules, and note that no sanctions will be imposed due to our action on these rules. Also see Response #9.

Comment #14: BAAQMD comments that EPA should have submitted comments to CARB and districts at the time of SCM adoption or shortly thereafter. CARB comments that the averaging provisions in these rules were based on SCAQMD Rule 1113 and that timely action by EPA on SCAQMD's February 18, 2000 submittal of Rule 1113 would have allowed the districts to consider EPA's concerns when they were adopting their rules.

Response #14: EPA did participate in the regulatory development process for the SCM and SCAQMD's Rule 1113. We note that the bulk of the deficiencies that we have identified in these rules relate to the averaging program which was added to the SCM one week before the SCM was adopted by the CARB. After only limited review, EPA did express concerns regarding the program to the CARB before adoption of the SCM. We were informed that our issues would be addressed through various means such as the Statewide Averaging Guidance Document and the MOU. The discussions with CARB and districts during the development of these documents has, instead, brought even more issues to light. EPA notes that our comments during rule development are not final and that our ultimate evaluation and approval or disapproval of rules only occurs after formal submittal. EPA did receive submittals of SCAQMD's Rule 1113 on February 18, 2000 and on December 14, 2001. The CAA prevents EPA from acting on the 2000 submittal of Rule 1113. EPA is

only allowed to act on the more recent 2001 submittal since this is the district's most current regulation for this source category. EPA was in the process of acting on the SCAQMD's 2001 submittal when that version was recently vacated by the Court. *National Paint and Coatings Association, Inc.* v. *SCAQMD,* (June 24, 2002, G029462). Also see Response #12.

Comment #15: CARB notes that confirmation of the volume of high VOC products sold is additional information that is not typically required for determining compliance with architectural coatings rules but that it is similar to the additional record verification that is necessary to determine compliance with the National Rule's exceedance fee and tonnage exemption options.

Response #15: Determining a manufacturer's compliance with an averaging program requires knowing the total volume sold to verify that the actual emissions do not exceed the allowable emissions. This cannot be accomplished and compliance cannot be determined if reliable and specific sales records are not required and available. Also see Responses #3 and #13.

Comment #16: CARB comments that EPA's proposed language to rectify Deficiency #2 by clarifying that records must be made available to the Executive Officer upon request is equivalent to the current rule language. CARB contends that requirements on manufacturers to describe the records being used to calculate coating sales under averaging programs are sufficiently specific and do not represent executive officer discretion.

Response #16: The current language in these rules is not equivalent to EPA's proposed language. While the current language requires that records be maintained, there is currently no language requiring that these records be surrendered to the Executive Officer.

Comment #17: CARB states that the public release of sales data is not necessary to demonstrate compliance. While CARB believes that all emissions data should be made publicly available, they argue that sales data which does not constitute ''emissions data'' is confidential and not necessary for determining compliance.

Response #17: EPA's proposed limited disapproval actions did not specifically identify California's treatment of information claimed confidential as a deficiency. Rather, Deficiency #2 focuses on the fact that the California rules do not specify which records must be maintained to quantify sales. It may well be, as CARB believes, that the rules can be revised to provide adequate certainty about record maintenance without changing California's treatment of certain records as confidential material. Also see Response #15.

III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. Several submitted comments did change our assessment of the rules as originally described in our proposed actions. Therefore, as authorized under section 110(k)(3), we are only finalizing the five deficiencies identified in our 2003 proposal (68 FR 47279), and these five deficiencies apply to all seven rules. Sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31, even if EPA does not approve subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action because, according to specific language incorporated into the rules, the deficient provisions will expire in January 2005, in advance of the end of the 18-month period allowed to correct the deficiencies. Similarly, EPA also will not promulgate a federal implementation plan (FIP) under section 110(c) if subsequent SIP revisions that correct the rule deficiencies are not approved within 24 months. Note that the submitted rules have been adopted by the local agencies, and EPA's final limited disapproval does not prevent the local agencies from enforcing their rules.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental

Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 2, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 17, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(293)(i)(B), (c)(297)(i)(A)(*5*), (c)(297)(i)(E), (c)(297)(i)(F), (c)(300)(i)(B), (c)(300)(i)(C), and (c)(315)(i)(C) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(293) * * *

(i) * * *

(B) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.14, adopted on November 14, 2001.

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(297) * * *

(i) * * *

(A) * * *

(*5*) Rule 74.2, adopted on November 13, 2001.

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(E) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4601, adopted on October 31, 2001.

(F) Santa Barbara County Air Pollution Control District.

(*1*) Rule 323, adopted on November 15, 2001.

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(300) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–3, adopted on November 21, 2001.

(C) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 426, adopted on April 17, 2002.

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(315) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rule 1113, adopted on February 24, 2003.

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[FR Doc. 03–32212 Filed 12–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7823]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable